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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DATAPIPE, INC., Plaintiff, v. DIGITAL FOOTPRINTS INTERNATIONAL, LLC d/b/a INTERNET IDENTITY, Defendants.	Civil Action No. ____________ (Filed Electronically)

DATAPIPE'S ORIGINAL COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Datapipe, Inc. ("Datapipe"), by and through its undersigned counsel, hereby brings this action against Digital Footprints International, LLC d/b/a Internet Identity ("Internet Identity") and alleges as follows:

NATURE OF THE CASE

1. This case is a straightforward breach of contract action. Datapipe seeks damages based on Internet Identity's failure to pay for services provided by Datapipe to Internet Identity under the parties' Master Services Agreement dated December 2, 2013 (the "Agreement"), along with subsequent Order Forms under the Agreement. A true and correct copy of the Agreement accompanies this Complaint as Exhibit A.

2. Datapipe fully performed under the Agreement by providing all required services to Internet Identity in accordance with the terms of the Agreement and the Order Forms. Nevertheless, Internet Identity repeatedly refused to pay invoices for the services provided by Datapipe.

3. As a result, Datapipe suspended services to Internet Identity for nonpayment of nearly $285,000 on April 24, 2015. Because Internet Identity still refused to pay the amount it owed, Datapipe terminated the Agreement on May 14, 2015.

4. Internet Identity continues to refuse to pay the amounts owed to Datapipe. Datapipe has been damaged by Internet Identity's failure to pay and other breaches of the Agreement. Accordingly, Datapipe has been forced to bring this lawsuit for breach of contract against Internet Identity.

PARTIES AND JURISDICTION

5. Plaintiff Datapipe is a Delaware corporation with its principal place of business at 10 Exchange Place, 12th Floor, Jersey City, New Jersey 07302. Datapipe is a leading global provider of information technology solutions to business, government, and other customers.

6. Defendant Digital Footprints International, LLC d/b/a Internet Identity is a Washington limited liability company with its principal place of business at 1142 Broadway, Suite 400, Tacoma, Washington 98402. Upon information and belief, none of its members are residents of Delaware or New Jersey. Its registered agent for service of process in New Jersey is David Morris, 14 Shelton Road, Mendham, NJ 07945. Its registered agent for service of process in Washington is Rod Rasmussen, 1142 Broadway Suite 400, Tacoma, WA 98402-3500.

7. This Court has subject matter jurisdiction over the claims set forth herein under 28 U.S.C. § 1332 because the parties are diverse in citizenship and the amount in controversy exceeds $75,000. *See* 28 U.S.C. § 1332(a).

8. This Court has personal jurisdiction over Internet Identity because it regularly conducts business within the State of New Jersey. Moreover, Internet Identity "irrevocably submit[ted] to the exclusive jurisdiction of the Federal and/or State courts of the State of New Jersey for the purposes of any suit, action or other proceeding arising out of the [Agreement] or the transactions contemplated hereby." Agreement § 13.11.

9. Venue is appropriate in this Court under 28 U.S.C. § 1391 because a substantial part of the events and omissions giving rise to the claim, including, but not limited to, Datapipe's contractual performance and Internet Identity's nonpayment, occurred in this Judicial District. *See* 28 U.S.C. § 1391(b)(2). Venue is also appropriate in this Court because Internet Identity "irrevocably and unconditionally waive[d] any objection to the laying of venue of any action, suit, or proceeding arising out of the [Agreement] or transactions contemplated hereby in (i) the United States District Court for the District of New Jersey … ". Agreement § 13.11.

FACTUAL BACKGROUND

The Agreement

10. Datapipe and Internet Identity entered into the Agreement on or about December 2, 2013, under which Datapipe agreed to provide, and Internet Identity agreed to purchase, various services. The terms of these purchases were governed

by the Agreement, Order Forms, and Service Schedules that were subsequently executed to further define the specific services to be provided. *See generally* Agreement. The Order Forms and Service Schedules were contemplated by, incorporated into, and governed by the Agreement. *See*, *e.g.,* Agreement §§ 2.1, 3.2, 4.1.

11. The Agreement's term incorporates the terms of all applicable Order Forms. It expires upon completion of the latest Order Form, and thereafter automatically renews for the same term unless previously cancelled. Agreement §§ 3.1, 3.2. Datapipe and Internet Identity entered into two Order Forms to complement the Agreement. The first was effective on November 29, 2013 and continued until November 28, 2016. The second was effective on February 10, 2014 and also continued until November 28, 2016. Accordingly, the Agreement continues until November 28, 2016, with an automatic renewal for another three-year term thereafter. Agreement §§ 3.1, 3.2

12. The Agreement requires payment by Internet Identity for all services provided by Datapipe after an invoice is issued: "[Internet Identity] shall remit payment on or before the due date set forth on all future invoices … without setoff or counterclaim, and without any deduction or withholding. " Agreement § 4.1.

13. The Agreement also makes clear that Internet Identity's obligation to pay survives suspension of services or termination of the Agreement for

nonpayment. Specifically, it provides that "[Internet Identity] shall pay Datapipe for all Services through the remaining balance of the then-current Term on each particular Order Form." Agreement § 3.3; *see also* Agreement § 3.4 (upon termination of Agreement, "any and all payment obligations of [Internet Identity] under the [Agreement] will immediately become due, including but not limited to Services set forth in an Order Form an due through the Order Form Expiration Data"); Agreement § 3.7 ("[Internet Identity] remains responsible for all fees and charges [Internet Identity] has incurred through the date of suspension").

14. In addition to all other legal and equitable rights, the Agreement allows Datapipe to suspend services after a ten-day cure period as a result of Internet Identity's nonpayment for more than thirty days. Agreement §§ 3.7, 4.2. Crucially, as noted above, such a suspension or termination of the Agreement does not relieve Internet Identity from its obligation to pay for the services it purchased under the Agreement or related Order Forms for the remaining term of the Agreement. Agreement § 3.7.

15. The Agreement may be terminated by either party after written notice of a material breach and a 30-day cure period. Agreement § 3.3. It also specifically allows termination for nonpayment after thirty days of nonpayment and a ten day notice and cure period. Agreement § 4.2; *see also* Agreement § 3.7 (allowing termination for any reason justifying suspension of services, including

nonpayment). In such event, Internet Identity agreed to pay Datapipe all amounts due upon termination. Agreement § 3.3; *see also* Agreement §§ 3.4, 3.7.

16. In the event Internet Identity refuses to pay for more than 30 days, it agreed to pay 1.5% monthly interest, or the maximum amount allowable by law, on past due amounts. Agreement § 4.2. Internet Identity also agreed that it would pay all costs, including attorneys' fees, in any action to enforce the Agreement. Agreement § 13.13.

17. The Agreement sets forth a specific mechanism for resolving billing disputes, requiring written notification of the basis of the dispute by Internet Identity within 30 days of the disputed invoice, accompanied by prompt payment of undisputed amounts. Agreement § 4.6. Specifically, the Agreement provides

> [Internet Identity] may dispute in good faith any portion of an invoice provided [Internet Identity]: (i) pays the full undisputed portion of the invoice by its due date, (ii) provides Datapipe with a written statement and supporting documentation regarding the dispute within 30 days from the date of the relevant invoice, and (iii) negotiates in good faith with Datapipe to resolve the dispute. Any invoice or portion of an invoice not disputed in accordance with this section shall be deemed undisputed.

Agreement § 4.4 (emphasis added). The Service Schedules incorporated into the Agreement further limit the type of service challenges that justify a billing credit, along with the procedures that must be followed by Internet Identity to receive such a credit.

18. Specifically, these Service Schedules set forth certain guaranteed service levels and require that Internet Identity must submit a written request for a credit by submitting a support ticket through the Datapipe customer service portal. Service tickets related to cloud services must be submitted within five days of the event giving rise to the request. Tickets related to hosting services must be submitted within fourteen days of the event.

19. The parties agreed that this service level guarantee process was Internet Identity's "sole and exclusive remedy" for claimed service failures covered by the guarantee.

20. The parties also strictly limited the set of circumstances justifying termination by Internet Identity for "compromised performance." *See* Agreement § 3.9. These four circumstances each require a series of major and sustained losses of system functionality that has adverse effects on Internet Identity. *See Id.* Internet Identity is justified in terminating only if 1) it suffers six or more hours of network unavailability in a twelve-month period, or six or more separate 20-minute outages in a single month; 2) it sustains two or more hours of power unavailability in a single month; 3) it experiences two or more occasions of total unavailability in a single month based on Datapipe hardware failures; or 4) Datapipe wholly fails to respond to a "Severity Level 1 Incident" on four separate occasions within a 30-day period. *Id.* If any of these events occur, Internet Identity must exercise its

termination right within seven days. *Id.* If they do not, Internet Identity cannot terminate the Agreement. No such failures occurred.

21. Finally, the parties agreed that the Agreement and any related disputes would be governed by New Jersey law. Agreement § 13.11. They further agreed that any lawsuit would be brought in New Jersey, and waived any defenses or objections to jurisdiction or venue in New Jersey state or federal courts. *Id.*

The Services Provided by Datapipe

22. After entering the Agreement on December 3, 2013, Datapipe immediately began providing online storage, security services, and networking services to Internet Identity with a monthly cost of roughly $69,000. A few months later, these services were increased by about $4,300 a month.

23. Internet Identity was responsible for the selection of the services that were provided by Datapipe. The Agreement and related Order Forms were the result of a collaborative process in which Internet Identity explained its needs, Datapipe proposed various solutions, and Internet Identity selected the solution it felt best fit its needs. As indicated by the February 2014 modification as well as later discussions, Datapipe was at all times willing to modify the services provided to fit Internet Identity's needs.

24. Internet Identity made several specific requests when ordering services from Datapipe. As one example, Internet Identity requested the use of Dell

Servers, as opposed to the Hewlett Packard servers generally utilized by Datapipe. This required that Datapipe purchase over $350,000 of custom equipment specifically for use with Internet Identity. Datapipe was not reimbursed by Internet Identity for this purchase.

25. In or around March 2014, the Internet Identity employee who was the primary point of contact with Datapipe, and who selected the Datapipe services purchased by Internet Identity, departed Internet Identity. Internet Identity, apparently unhappy with the choices made by its former employee, began its attempts to avoid its obligations and scale back the services it committed to purchase, explaining that the company was under substantial pressure to cut costs.

26. Datapipe made sincere efforts to resolve Internet Identity's concerns. Datapipe engaged in discussions with Internet Identity in which Datapipe proposed various alternative solutions to meet Internet Identity's desire to scale back services and cut costs. Unfortunately, Internet Identity refused to engage fully in this process or accept these solutions, apparently deciding that it wanted to escape the Agreement altogether.

Internet Identity's Refusal to Pay

27. Internet Identity never submitted a dispute to a Datapipe invoice during the parties relationship, as required by the Agreement. Nor did Internet Identity experience any sustained and serious system failures justifying termination

of the Agreement. *See* Agreement § 3.9. Instead, as Internet Identity acknowledged on several occasions, it simply believed that it had over-ordered services from Datapipe and wanted to cut costs. Internet Identity's complaints were not with Datapipe's services, they were with the obligations Internet Identity undertook based on the services it selected.

28. Internet Identity ceased paying its bills, without justification or explanation, in February 2015. After roughly a month of nonpayment, Internet Identity sent a letter to Datapipe in late March 2015 raising new and unsubstantiated complaints about system performance that it claimed constituted breaches of the Agreement by Datapipe. This letter did not acknowledge the $285,000 that Internet Identity owed to Datapipe for services provided in January and February 2015.

29. Datapipe responded just over a week later, explaining by letter that Internet Identity's claims of breach were supported by neither the facts nor the Agreement. Datapipe also reminded Internet Identity of its obligations under the Agreement, while at the same time inviting Internet Identity to engage in discussions with Datapipe to re-examine the scope of the services purchased.

30. Internet Identity rejected this invitation and maintained its refusal to pay. As a result, Datapipe sent to Internet Identity a formal demand for payment of the outstanding balance of $284,662.74 on April 14, 2015. In this demand,

Datapipe cautioned that if payment was not made within ten days, Datapipe would exercise its rights under the Agreement to suspend (and later terminate) Internet Identity's services. *See* Agreement §§ 3.3, 3.7, 4.2. Internet Identity did not pay, forcing Datapipe to suspend its services on April 24, 2015.

31. The impasse continued. Instead of paying to Datapipe the amounts it was obligated to pay, Internet Identity responded with a letter raising again the same previously refuted claims of nonperformance. It claimed that this constituted a breach by Datapipe and therefore purported to terminate the Agreement.

32. As a result of Internet Identity's persistent failure to pay, Datapipe was forced to exercise its contractual right of termination in a letter dated May 14, 2015. *See* Agreement §§ 3.3, 3.7, 4.2. Datapipe again demanded that Internet Identity pay the past due $284,662.74. Datapipe also demanded that Internet Identity fulfill its contractual obligation to pay the $1,318,306.50 in future damages caused by the Agreement's termination as a result of Internet Identity's breach. *See* Agreement §§ 3.3, 3.4, 3.7.

33. Because Internet Identity has still failed to pay, Datapipe brings this action to enforce its contractual rights and recoup the damages it has suffered. These include, but are not limited to, the $284,662.74 in past due service charges, $1,318,306.50 in future contract damages as a result of Internet Identity's breach,

and applicable interest, court costs, and attorneys' fees as allowed by the Agreement.

CAUSE OF ACTION

Count I – Breach of Contract

34. Datapipe incorporates by reference the statements and allegations set forth in paragraphs 1 through 33, with the same force and effect as if fully rewritten herein.

35. Datapipe and Internet Identity entered into a valid and binding contract embodied by the Agreement and subsequent Order Forms and Service Schedules through which Datapipe agreed to, and did, provide valuable services to Internet Identity and Internet Identity agreed to pay for those services. Good and valuable consideration was exchanged for this Agreement in the form of the services provided by Datapipe and the payments made, and promised to be made, by Internet Identity.

36. In the Agreement and corresponding Order Forms and Service Schedules, Internet Identity specifically promised to pay for the services provided to it by Datapipe pursuant to the terms of the Agreement, the Order Forms, the Service Schedules, and the invoices issued by Datapipe. Internet Identity also agreed that it would remain liable for all future amounts due under the Agreement,

the Order Forms, and applicable invoices if the Agreement was terminated for any reason other than a material breach by Datapipe.

37. Despite this clear obligation, Internet Identity refused to pay nearly $285,000 due to Datapipe for services provided to Internet Identity by Datapipe pursuant to the Agreement, the Order Forms, and the Service Schedules.

38. Datapipe has performed all conditions precedent to recovery under the Agreement, has completed all of its obligations under the Agreement, including providing required services, and did not materially breach the Agreement.

39. As a result of Internet Identity's failure to pay amounts due as required by the Agreement, Datapipe has suffered and will continue to suffer significant damages, in an amount in excess of $1,000,000. These damages include the unpaid past due amounts, future contract damages, interest, attorneys' fees, and court costs.

40. Because all conditions precedent have been satisfied, Datapipe brings this breach of contract claim against Internet Identity and requests that Internet Identity be ordered to pay all damages suffered by Datapipe as a result of Internet Identity's breach.

41. Further, pursuant to Section 13.13 of the Agreement, Internet Identity is liable for and should be ordered to pay all reasonable and necessary attorneys' fees and costs incurred by Datapipe in bringing this litigation.

PRAYER FOR RELIEF

WHEREFORE, Datapipe respectfully requests a trial by jury and that Datapipe be awarded a judgment against Internet Identity for the following:

a. Actual damages suffered by Datapipe as a result of Internet Identity's breach of contract;

c. Reasonable and necessary attorneys' fees and costs incurred by Datapipe in bringing its breach of contract claim against Internet Identity;

d. Pre- and post-judgment interest on any and all amounts awarded to Datapipe; and

e. Any and all other relief to which Datapipe is entitled.

Dated: August 31, 2015

Respectfully submitted,

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Attorneys for Plaintiff
Datapipe, Inc.

CERTIFICATION PURSUANT TO LOCAL CIVIL RULES 11.2 & 40.1

I hereby certify that, to the best of my knowledge, this matter is not the subject of any other action pending in any court or of any pending arbitration or administrative proceeding.

Dated: August 31, 2015

Respectfully submitted,

By: s/ William C. Baton

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Attorneys for Plaintiff Datapipe, Inc.

EXHIBIT A

DATAPIPE

Master Services Agreement

This Master Services Agreement (**"MSA"**) is effective as of the date of execution by the last Party indicated on the signature page below (**"Effective Date"**) and is between **Datapipe, Inc.** (**"Datapipe"**), a Delaware corporation with an address of 10 Exchange Place, 12th Floor, Jersey City, New Jersey 07302 and **Digital Footprints International, LLC doing business as Internet Identity** (**"Client"**), a Washington limited liability company with an address of 1142 Broadway, Suite 400, Tacoma, WA 98402. Datapipe and Client are referred to in the MSA individually as a **"Party"** and collectively as the **"Parties."**

BACKGROUND

Client desires to obtain from Datapipe, and Datapipe desires to provide to Client, certain IT infrastructure and/or related services as more particularly described in the MSA and identified on one or more Service Schedules and Order Forms. Each Party acknowledges the receipt and sufficiency of adequate consideration as further detailed in the MSA.

SERVICE SCHEDULES

As of the Effective Date, Datapipe will provide and Client will purchase:

☐ 3 PAR Storage Services as more specifically set forth in the attached Service Schedule (**"3 PAR Storage Services"**).

☒ Dedicated Hosting Services as more specifically set forth in the attached Service Schedule (**"Dedicated Hosting Services"**).

☐ PCI Services as more specifically set forth in the attached Service Schedule (**"PCI Services"**).

☐ Stratosphere Virtualization Services as more specifically set forth in the attached Service Schedule (**"Stratosphere Virtualization Services"**).

☒ Stratosphere Elastic Cloud Services as more specifically set forth in the attached Service Schedule (**"Stratosphere Elastic Cloud Services"**).

☐ Managed AWS Services as more specifically set forth in the attached Service Schedule (**"Managed AWS Services"**).

☐ AWS Reseller Services as more specifically set forth in the attached Service Schedule (**"AWS Reseller Services"**).

☐ Colocation Services as more specifically set forth in the attached Service Schedule (**"Colocation Services"**).

☐ Managed Colocation Services as more specifically set forth in the attached Service Schedule (**"Managed Colocation Services"**).

GENERAL TERMS AND CONDITIONS

1 DEFINITIONS.

"Affiliate" means any Person that a Party controls, that controls a Party, or that is under common control with a Party. For purposes of this definition, "control" shall mean beneficial ownership, whether directly or indirectly, of the securities entitled to vote in the election of directors (or, in the case of an entity that is not a corporation, of the election of the corresponding management authority) in the entity of (i) more than 50% of the securities or (ii) such lesser percentage of securities as is the maximum ownership permitted in the country where the entity exists.

"Audit" means a security audit performed by Client or its agent pursuant to Section 8.3 of the MSA.

"AUP" means the Datapipe Acceptable Use Policy located at http://www.datapipe.com/about-us-legal-acceptable-use-policy.htm, as amended from time to time. For certain Services, the AUP may also include the acceptable use policy of the relevant service provider who is a Third Party, such as Amazon, Inc.

"Business Day" means each day, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding any day government agencies in the country in which the Services are provided are required or permitted to be closed. The specific time zone shall be determined based on the location of the Facility providing the relevant Service.

"Client Area" means the portion of the Facility, if any, made available and dedicated to Client by Datapipe for the placement of Client Equipment and use of the Colocation Services.

"Client Content" means all data and information, including, without limitation, data text, software, scripts, video, sound, music, graphics and images that are created, uploaded, stored or transferred by or for Client or its Affiliate in connection with the use of any of the Services.

"Client Equipment" means Client's computer hardware and other tangible equipment (including without limitation servers, telecommunications equipment, cables and wires), if any, which are housed or used in the Facility. Client will identify all Client Equipment to Datapipe in writing prior to installation and in accordance with the rules of the subject Facility.

"Client Portal" means Datapipe's in-house ticketing system found at https://one.datapipe.com or such other URL as designated by Datapipe from time to time.

"Client Software" means the object code versions of any software, if any, provided to Datapipe by Client or otherwise utilized by Client in connection with the Services.

"Commencement Date" means the earlier of (a) that date Client has been provided access to the Services, to be documented by an e-mail notification to Client or (b) 7 days following the relevant Order Form Effective Date.

"Datapipe Cloud Zone" means the portion of the Stratosphere Elastic Cloud Services that resides in a specific Facility geographic region, as same may be defined and designated by Datapipe from time to time. For example, all Facilities within New Jersey constitute a single Datapipe Cloud Zone.

"Datapipe Equipment" means the equipment, if any, that Datapipe owns, leases or contracts for Client's use or availability to use under the terms of the MSA, as more particularly described in the Order Form(s).

"Datapipe Software" means the object code versions of the software (and any updates thereto), if any, provided by Datapipe or otherwise utilized by Client in connection with the Services and as more particularly described in the Order Form(s). For clarity, the definition of Datapipe Software shall not include Third Party Products.

"Datapipe Support" means the Datapipe Help Desk, which is the primary point of contact for all queries and communications regarding Service incidents. Datapipe Support is reachable by telephone (888-749-5821), e-mail (support@datapipe.com), or via the Client Portal and is available 24 hours a day, 7 days a week, 365 days a year (366 days in a leap year).

"DMCA" means the Digital Millennium Copyright Act, 17 USLA §512C, a United States copyright law or any similar laws of the country in which the Services are being provided.

"End User" means any individual or entity that directly or indirectly through another user: (a) accesses or uses Client Content; or (b) otherwise interfaces, accesses or uses the Services.

"Facility" means the Datapipe facility used by Datapipe to provide the Services as indicated in the corresponding Order Form(s) including, but not limited to, the Datapipe facility within a Datapipe Cloud Zone, in which the Services are provided or the facility at which the Client Equipment is located.

"General Terms" means the general terms and conditions set forth in the MSA, and shall not include the Privacy Policy, Order Form(s), Service Schedule(s) and AUP.

"Minimum Managed AWS Services Monthly Recurring Fee" means the minimum Monthly Recurring Fee for Managed AWS Services in any given month as set forth in the Order Form, regardless of the actual Managed AWS Services usage by Client.

"Minor Service Modification" means any modifications to the Services or Service Components of $500.00 or less which are submitted by Client via e-mail or the Client Portal and subsequently approved by Datapipe.

"Monthly Recurring Fee" means the amount to be paid monthly by Client for the applicable Service(s) as specified in the Order Form(s), e-mail(s), ticket(s) or other methods approved by the Parties.

"Monthly Remittance Date" means the day of each month the Monthly Recurring Fee shall be due and payable by Client and shall be based on the Commencement Date, except as provided in this definition. If the Monthly Remittance Date is a day which does not exist in a particular calendar month, then the Monthly Remittance Date shall be the last date of such month (e.g. if the Monthly Remittance Date is the 30th of every month, then in February, the Monthly Remittance Date shall be either February 28th or 29th, depending on the year).

"MSA" means these General Terms, the relevant Service Schedule(s), the Order Form(s), Privacy Policy and the AUP.

"Order Form" means any order form executed by both Client and Datapipe, which incorporates these General Terms by reference. Each Order Form will be considered a separate agreement from any other Order Form. Each Order Form shall be governed by these General Terms and applicable Service Schedule(s) and shall become effective on the Order Form Effective Date.

"Order Form Effective Date" means the effective date set forth and identified as such on any Order Form.

"Order Form Expiration Date" means the expiration date set forth and identified as such on any Order Form.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority or other entity.

"Privacy Policy" means the Datapipe privacy policy located at http://www.datapipe.com/legal/privacy_policy_safe_harbor or such other URL as designated by Datapipe from time to time, as may be amended from time to time. For certain Services, the Privacy Policy may also include the privacy policy of the relevant service provider who is a Third Party, such as Amazon, Inc.

"Regulatory Activity" means any regulation and/or ruling, including modifications thereto by any regulatory agency, legislative body or court of competent jurisdiction.

"Renewal Term" means the automatic renewal of the initial Service Term specified in each Order Form.

"Services" means all of the services (a) ordered by Client or its Affiliate as set forth on the corresponding Order Form(s) governed by the MSA and the corresponding Service Schedule(s); and/or (b) accessed, and/or made use of by Client via the APIs or the Client Portal or Cloud Portal (as defined in the Stratosphere Elastic Cloud Services Schedule). The Services may be modified as provided in the Order Form(s) and Service Schedule(s).

"Service Component(s)" means each particular element or portion of the Services.

"Service Schedule(s)" means the schedules for Services attached to these General Terms that correspond to the Services being provided to Client.

"Service Term" means as to each Service ordered by Client, the period commencing on the Commencement Date with respect to each particular Order Form and ending on the Order Form Expiration Date designated in that Order Form.

"SLA" means the Service Level Agreement for each Service type as set forth in the applicable Service Schedule. Client may have a separate Service Level Agreement for each type of Service.

"Subsidiary" means an Affiliate that is controlled by a Party.

"Suggestions" means any communications, comments, questions, suggestions, or related materials provided to Datapipe by Client or any End User, whether by letter, e-mail, telephone, or otherwise, suggesting or recommending changes to the Services, including, without limitation, new features or functionality.

"Term" means the Service Term and any corresponding Renewal Term.

"Third Party" means a Person that is not a Party or an Affiliate of a Party.

"Third Party Products" means those various additional software applications or services which may be licensed by Datapipe to Client from time to time in conjunction with the Services.

"TPS Agreements" means those agreements for products and services provided by Third Parties which are entered into directly between Client and such Third Party. TPS Agreements are separate and independent from the MSA, and Datapipe is not a party to and is not responsible for the performance of any TPS Agreements.

2 DELIVERY OF SERVICES.

2.1 General. Datapipe and/or its Affiliates will provide the Service(s) and/or Service Component(s) in accordance with the MSA. The description, charges, and other terms applicable to the individual Services are set forth in the applicable Service Schedule(s) and Order Form(s). Client may order additional Services by updating or amending the MSA through the execution of additional Order Form(s) or a Minor Service Modification. The Service(s) shall be subject to the SLA set forth in the applicable Service Schedule(s). Datapipe will not be bound by any purchase order forms of Client.

3 TERM AND TERMINATION; SUSPENSION.

3.1 Term. The term of the MSA will commence on the Effective Date and shall remain in effect until the expiration of the latest Term unless earlier terminated in accordance with the provisions of the MSA, the General Terms or otherwise agreed to in writing between the Parties. Each Order Form shall commence on its respective Order Form Effective Date and continue in effect until the latest Order Form Expiration Date or Renewal Term.

3.2 Renewal Term. Upon the expiration of each Term, each expiring Order Form shall be subject to automatic renewal for the same period as the initial Service Term or previous Renewal Term, as the case may be, unless: (i) Client notifies Datapipe in writing of its intent to terminate a certain Order Form/Service Schedule or the MSA in its entirety no less than 30 days prior to the end of the then current

Term of the applicable Order Form, or (ii) Datapipe notifies Client in writing of its intent to terminate a certain Order Form/Service Schedule or the MSA in its entirety no less than 30 days prior to the end of the then current Term of the applicable Order Form. Client shall remit payment to Datapipe for all Services through and including the date of termination.

3.3 Termination for Cause. Either Party may terminate the MSA or any Order Form (and associated Service Schedule), in whole or in part, in the event that: (i) the other Party materially breaches any material term or condition of the MSA and fails to cure such breach within 30 days of receiving written notice thereof; (ii) the other Party becomes insolvent; (iii) the other Party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; (iv) the other Party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within 60 days of filing; (v) the other Party has a receiver appointed with respect to all or substantially all of its assets; or (vi) the other Party makes an assignment for the benefit of creditors. Notwithstanding the foregoing, in addition to the termination rights provided in this Section, Datapipe may terminate the MSA or any Order Form (and associated Service Schedule), if any event that allows Datapipe to suspend Services and which are described in Section 3.7 occurs. Client acknowledges that, in case of termination as provided in this Section, Datapipe shall not be liable for any damages of any nature whatsoever arising from such termination including, but not limited to, credits due Client, lost profits, loss of Client Content, incidental, special, exemplary, or consequential damages, or any claims or demands brought against Client by any third party. All notices required by this Section shall be in accordance with the notice requirements of Section 13.9. In the event the MSA is terminated by Datapipe for cause, Client shall pay Datapipe for all Services through the remaining balance of the then-current Term on each particular Order Form.

3.4 End of Services. Upon the termination of the MSA or any Order Form or Service Schedule for any reason: (i) all rights and licenses granted by either Party under the applicable Order Form and/or Service Schedule(s) shall cease immediately; (ii) Datapipe will immediately cease providing, and Client shall not be required to pay for any further Services rendered thereunder except to the extent that Client Equipment, if any, remains in the Facility; (iii) each Party shall return to the other Party, or destroy all Confidential Information (as defined herein) of the other Party within 30 days following such termination, except as may be required to comply with any applicable legal or accounting record-keeping requirements, in which case all such Confidential Information shall continue to be subject to the provisions of Section 5 hereof; (iv) any and all payment obligations of Client under the MSA will immediately become due, including but not limited to Services set forth in an Order Form and due through the Order Form Expiration Date; (v) Datapipe shall remove all Client Content from any Datapipe Equipment; (vi) Client shall return all Datapipe Software to Datapipe; (vii) Client shall erase and remove all copies of all Datapipe Software from any computer equipment and media in Client's possession, custody or control; and (viii) Client shall deliver or make available all Datapipe Equipment to an authorized representative of Datapipe; (ix) Client shall remove all Client Equipment (excluding any Datapipe Equipment) and any other Client property from the Facility; and (x) Client shall return the Client Area to Datapipe in the same condition as it was on the Commencement Date, normal wear and tear excepted. If Client fails to comply with any of the provisions of this Section, Datapipe may, at its sole and reasonable discretion, move Client Equipment to storage and charge Client a reasonable fee for the cost of such removal and storage.

3.5 Survival. All terms and provisions which should by their nature, survive the termination or expiration of the MSA including, but not limited to Sections, 1, 5, 7, 8, and 11 through 13 inclusive, shall so survive. Notwithstanding the foregoing, in the event Client continues to use any Services following termination of the MSA or any Order Form, Client shall be responsible for payment of such Services at Datapipe's then-current market rates.

3.6 IP Addresses. Upon expiration or termination of the MSA or any Service Schedule, Client must discontinue use of the terminated or expired Services and relinquish use of the IP addresses and server names assigned to Client by Datapipe in connection with the terminated or expired Services, including pointing the DNS for Client's domain name(s) away from any Services provided by Datapipe. Client agrees that Datapipe may, as it deems necessary, make modifications to DNS records and Datapipe Cloud Zones on Datapipe managed or operated DNS servers and services to ensure compliance with this Section.

3.7 Suspension. Datapipe may suspend the provision of Services without liability if: (i) Datapipe reasonably believes that Services are being used (or have been or will be used) by Client in material violation of the MSA or any applicable law, court order, rule or regulation in any jurisdiction; (ii) Client does not cooperate with Datapipe's investigation of any suspected violation of the MSA or any applicable law, court order, rule or regulation in any jurisdiction; (iii) Datapipe reasonably believes the Services have been accessed or manipulated by a Third Party without Client's consent or in violation of the MSA; (iv) Datapipe reasonably believes that suspension of Services is necessary to protect Datapipe's network or other Datapipe customers and the continued use of the Services by Client may adversely impact the services or the systems or content of any other Datapipe customer; (v) a payment for Services is overdue by more than 30 days; (vi) Datapipe reasonably believes that the use of the Services by Client may subject Datapipe, its Affiliates, or any Third Party to liability; or (vii) suspension is required by law, statute, regulation, rule or court order. Datapipe will give Client reasonable advance written notice of a suspension under this paragraph and a chance to cure the grounds on which the suspension is based, unless Datapipe determines, in Datapipe's reasonable judgment, that a suspension on shorter or contemporaneous notice is necessary to protect Datapipe or its other customers from operational, security, or other risk or the suspension is ordered by a court or other judicial or governmental body. A violation of the TPS Agreements shall be treated the same as a violation of the MSA for purposes of this provision. If Datapipe suspends the Client's right to access or use any portion or all of the Service:

(a) Client remains responsible for all fees and charges Client has incurred through the date of suspension and such fees and charges shall once again commence upon the conclusion, if any, of any period of suspension;
(b) Client remains responsible for any applicable fees and charges for any Services which Client continues to have access to, as well as applicable data storage fees and charges, and fees and charges for in-process tasks completed after the date of suspension;
(c) Client will not be entitled to any SLA credits under the SLAs during any period of suspension; and
(d) Datapipe may terminate Client's access to Client Content stored in the Services during a suspension, and Datapipe shall not be liable to Client for any damages or losses Client may incur as a result of such suspension.

3.8 Transition of Services/Data Preservation in the Event of Termination. Upon any termination of this MSA, and provided Client delivers a written request to Datapipe within 5 business days of such termination date, Datapipe shall remove and copy onto a mutually agreed-upon media device to be shipped to Client all Client Content and any other Client data found on any Datapipe Equipment and media in Datapipe's possession, custody or control (the "**Client Data Copy**"). Client agrees to pay, prior to shipment, Datapipe's expenses associated with the reproduction and shipping of the Client Data Copy, including, but not limited to the acquisition of any necessary media devices or equipment in order to produce the Client Data Copy. In addition, Datapipe shall maintain the Services for an additional period of up to ninety (90) days and otherwise extend the MSA termination date so as to facilitate an orderly migration (at the then-current Monthly Recurring Fee and/or other fee rates then payable to Datapipe), provided Client gives written notice to Datapipe requesting such additional period of time (not to exceed 90 days), which notice must be given no later than 5 business days following the date of such termination.

3.9 Termination for Cause by Client for Compromised Performance. In addition to Client's remedies as may be provided in Section 3.3 herein, Client shall be permitted to terminate this MSA upon written notice to Datapipe in the event any of the following occur, and provided such notice is given to Datapipe within 7 days of the last date giving rise to such termination right:

- Network Unavailability. Within any 12-month period, Client experiences 6 or more hours of Datapipe Network Unavailability as described in Section 1.1 of the Dedicated Hosting Services SLA; or (b) during any calendar month, Client experiences 6 or more separate instances of Datapipe Network Unavailability as described in Section 1.1 of the Dedicated Hosting Services SLA, in which the duration of each such instance of Datapipe Network Unavailability consists of at least 20 consecutive minutes. Datapipe Network Unavailability shall not include any unavailability arising directly or indirectly from those exceptions set forth in Section 6 of the Dedicated Hosting Services SLA; or

- Power Unavailability. Within any 30-day period, Client experiences two or more hours of Power Unavailability as described in Section 2.1 of the Dedicated Hosting Services SLA; or

- Hardware Replacement. Within any 30-day period, Client experiences two or more occasions of total Services unavailability exceeding three hours in a Client production Solution due to a failure of Datapipe to meet the Hardware Replacement Guarantee described in Section 3.1 of the Dedicated Hosting Services SLA; or

- Incident Management. Within any 30-day period, Client experiences 4 or more occasions of "Initial response" failure with respect to a Severity Level 1 Incident as described in Section 4.1 and Section 5 of the Dedicated Hosting Services SLA.

4 PAYMENT AND PAYMENT TERMS.

4.1 Fees. The Monthly Recurring Fee or Minimum Managed AWS Services Monthly Recurring Fee, as the case may be, shall be billed to Client via invoice in advance for the following calendar month or in any given month for the Minimum Monthly Service Fee. Non-recurring fees including, but not limited to, set-up fees shall be billed as incurred in any given month and fees for consumption-based Services such as conditioned power use overages or bandwidth use overages shall be invoiced in arrears ("**Additional Fees**"). Unless otherwise specified in an Order Form, all payments shall be made in U.S. dollars and shall be sent to Datapipe, Inc., 10 Exchange Place, 12th Floor, Jersey City, New Jersey 07302. Initial invoices for new Services shall be due and payable within 10 days of the Commencement Date. Client shall remit payment on or before the due date set forth on all future invoices which shall due date be designated as the monthly anniversary of the initial invoice due date. All amounts payable under the MSA will be made without setoff or counterclaim, and without any deduction or withholding.

4.2 Late Payments. In the event Client fails to pay any amounts owed Datapipe under the MSA within 30 days of the invoice date, Datapipe may, upon 10 days' prior written notice to Client: (i) terminate the MSA or the respective Order Form/Service Schedule and discontinue such Services to Client; (ii) suspend some or all Services to Client until payment is made; (iii) take possession of any Datapipe Equipment and/or take possession of any Client Equipment and transport and store same, at Client's expense, in full or partial satisfaction of any sums due, without liability to prosecution or for damages; and/or (iv) restrict Client's physical access, if any, to the Client Area and Client Equipment. Any disconnection or suspension of Services shall continue until such time as all outstanding sums are remitted and may result in the requirement of a re-connect fee, in an amount not to exceed the Monthly Recurring Fee. Late payments shall accrue interest at the greater of a rate of 1.5% per month or the maximum amount permitted by law. In the event of a suspension under this Section, Client will not have any access to Client Content and Datapipe will only retain Client Content for which storage Service Components have been previously purchased by Client for a period not to exceed 14 days from the date of any such suspension. All use of the Services shall cease during any suspension period.

4.3 Taxes. Fees for Services are exclusive of all taxes, duties, levies and similar fees now in force or enacted in the future or imposed on the transaction and/or the delivery of Services by any governmental authority, including, but not limited to any excise or VAT tax, all of which Client will be responsible for and will pay in full, exclusive of taxes on Datapipe's income. If Client claims exemption from any taxes arising from the provision of the Services, Client shall provide Datapipe with documentation required by the taxing authority to support such exemption.

4.4 Fee Disputes. Client may dispute in good faith any portion of an invoice provided Client: (i) pays the full undisputed portion of invoice by its due date, (ii) provides Datapipe with a written statement and supporting documentation regarding the dispute within 30 days from the date of the relevant invoice, and (iii) negotiates in good faith with Datapipe to resolve the dispute. Any invoice or portion of an invoice not disputed in accordance with this Section shall be deemed undisputed. If the dispute is not resolved within 45 days from Datapipe's receipt of Client's written statement, either Party may pursue its rights or remedies available either at law or pursuant to the MSA. No interest shall accrue on any payment that is disputed in good faith by Client while such dispute is pending. Notwithstanding the foregoing, if such dispute is later resolved in favor of Datapipe, such amount shall be subject to the monthly finance charge rate indicated in Section 4.2 from the original due date until payment in full has been received by Datapipe.

4.5 Pricing Changes. Except in the case of a material change in the Services agreed to in writing by both Parties, a change in pricing by a Third Party service provider or a Regulatory Activity incurred by Datapipe in connection with the provision of the Services, Datapipe shall not raise the Monthly Recurring Fee or Minimum Monthly Recurring Fee for Services provided under any Order Form before the initial Order Form Expiration Date. At any time after an Order Form Expiration Date, Datapipe shall have the right to change or increase any fees for Services, upon at least 60 days prior written notice to Client (**"Increase Notice"**). Notwithstanding the foregoing, Client shall have 60 days' after receipt of the Increase Notice in which to terminate the MSA or corresponding Order Form(s)/Service Schedule(s) by providing Datapipe with written notice of termination (**"Increase Termination Notice"**). Should Client fail to provide the Increase Termination Notice within this 60-day period, Client shall have waived its right to terminate and the Monthly Recurring Fee increase shall be in effect for the remainder of the Renewal Term. Any such increases accepted by Client shall be effective as of the next applicable Monthly Remittance Date after the expiration of the 60-day notice period. In the case of a material change in the Services, the Parties will execute an Order Form or other form of written amendment. In addition to its rights under the terms of this Section, Datapipe reserves the right to increase the Monthly Recurring Fee effective as of the annual anniversary each year of the Commencement Date, consistent with any documented increases in Datapipe's direct costs associated with the Datapipe Software.

5 CONFIDENTIAL INFORMATION.

5.1 Confidential Information. **"Confidential Information"** shall include all information, whether in tangible or intangible form, that is marked or designated as confidential or that, under the circumstances of its disclosure, should be considered confidential. Such information shall include, but is not limited to, any nonpublic information (written, oral or electronic) disclosed by one Party to the other Party as well as the following information of the respective Parties, without limitation: (a) customer lists and the names of customer contacts, e-mail addresses, business plans, technical data, product ideas, personnel, contracts and financial information; (b) trade secrets, techniques, processes, know-how, business methodologies, schematics, employee suggestions, development tools and processes, computer printouts, computer programs, design drawings and manuals, and improvements; (c) plans for future products and developments; (d) information about costs, profits, markets and sales; (e) all documents, books, papers, drawings, models sketches, and other data of any kind and description, including electronic data recorded or retrieved by any means, that have been or will be disclosed, as well as written or oral instructions or comments; (f) any data or information stored on the Datapipe Equipment; and (g) the contents of the MSA. Information shall not be deemed Confidential Information if such information: (i) can be shown was known by the receiving Party prior to receipt from the disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (ii) can be shown was known independently of disclosure by the disclosing Party to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; or (iii) becomes publicly known or otherwise ceases to be secret or confidential, except as a result of a breach of the MSA, any Service Schedule or any obligation of confidentiality by the receiving Party. The receiving Party may disclose Confidential Information pursuant to a subpoena from a governmental agency issued pursuant to applicable law, provided that, unless restricted by the subpoena or otherwise restricted by law, the receiving Party provides reasonable notice to the other Party of the required disclosure so as to permit the other Party a reasonable period of time to respond to such request for disclosure.

5.2 Nondisclosure of Confidential Information. Each Party agrees not to use, disclose, sell, license, publish, reproduce or otherwise make available the Confidential Information of the other Party to any third party, and further agrees not to use the Confidential Information of the other Party except and only to the extent necessary to perform their respective obligations under the MSA. Each Party agrees to secure and protect the other Party's Confidential Information with the same degree of care and in a manner consistent with the maintenance of such Party's own confidential and proprietary rights in the information (but in no event less than reasonable care) and to take appropriate action by instruction or agreement with its employees, consultants, affiliates or other agents who are permitted access to the other Party's Confidential Information to satisfy its obligations under this Section. The foregoing obligations of confidentiality shall survive the termination or expiration of the MSA.

5.3 Maintenance of Confidentiality. Client acknowledges that Datapipe may require that employees and other visitors of Client seeking access to a Facility execute a non-disclosure agreement which is consistent with Client's confidentiality obligations under this Section. Each Party agrees to immediately notify the other Party in the event of any unauthorized use or disclosure of the other's Confidential Information.

5.4 Injunctive Relief. Each Party acknowledges that unauthorized disclosure or use of Confidential Information of the other Party could cause irreparable harm and significant injury to such Party for which monetary damages alone would not be adequate. Accordingly, each Party may seek immediate temporary and permanent injunctive relief to remedy any breaches of the confidentiality provisions contained herein.

5.5 Disposition of Confidential Information. All Confidential Information and all copies thereof shall be and remain the property of the disclosing Party. Upon the written request from the disclosing Party, the receiving Party shall destroy and certify the destruction of, all Confidential Information of the disclosing Party with the exception of any copies which must be maintained pursuant to applicable law.

Notification of Breach. Datapipe agrees to give Client prompt notice of any breach or suspected breach of any Datapipe system which results in or might result in any disclosure of Confidential Information not permitted herein, take all actions necessary to stop such breach and cooperate with Client as may be reasonably required in the investigation of any such breach and disclosure, including providing to Client any information reasonably necessary to inform third parties of such breach.

6 SOFTWARE OWNERSHIP AND USE.

6.1 Software Provided by Datapipe. Datapipe grants Client during the Term a nonexclusive, nontransferable (except as otherwise provided in these General Terms), royalty-free worldwide license, without the right to grant sublicenses, to use the Datapipe Software and Third Party Products used in the provision of the Services. Datapipe shall use reasonable commercial efforts to install and maintain the Datapipe Software on the Datapipe Equipment such that the Datapipe Software operates in accordance with applicable specifications. Client shall not, and shall not permit others to: (a) modify, copy, or otherwise reproduce the Datapipe Software in whole or in part; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for or structure of the Datapipe Software; (c) distribute, sublicense, assign, share, timeshare, sell, rent, lease, grant a security interest in, or otherwise transfer the Datapipe Software or Client's right to use the Datapipe Software (except as otherwise provided in the MSA); or (d) remove, modify or obscure any copyright, trademark or other proprietary notices or labels on the Datapipe Software. All rights not expressly granted to Client are reserved by Datapipe or Datapipe's licensors and suppliers. The Datapipe Software is provided with any warranties so assignable and subject to the limitations on liability, disclaimer of warranty and other terms in these General Terms.

6.2 Software Provided by Client. Client grants Datapipe during the Term a nonexclusive, nontransferable, royalty-free worldwide license, without the right to grant sublicenses, to use the Client Software solely to provide the Services to Client. Datapipe shall not, and shall not permit others to: (a) modify, copy, or otherwise reproduce the Client Software in whole or in part; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for or structure of the Client Software; (c) distribute, sublicense, assign, share, sell, lease, grant a security interest in, or otherwise transfer the Client Software or Datapipe's right to use the Client Software; or (d) remove any proprietary notices or labels on the Client Software. All rights not expressly granted to Datapipe are reserved by Client or Client's licensors and suppliers.

7 CLIENT OBLIGATIONS AND REPRESENTATIONS.

7.1 General. Client represents that:

7.1.1 Client has the legal right and authority to enter into the MSA including any Order Form(s) or other related documents, and will continue to have such legal right and authority during the Term.

7.1.2 Client and any End Users will use the Services only for lawful purposes and in accordance with the MSA. Client will comply with all applicable laws and regulations while receiving and in connection with the use of the Services.

7.2 Data Retention. Client acknowledges that, unless specifically contracted as an element of the Services, Datapipe shall not create or maintain an archive or backup of Client Content, and, except as provided herein, Datapipe shall have no liability to Client or any other person for loss, damage or destruction to any Client Content. Client is responsible for properly configuring and using the Services and taking those steps Client deems necessary to maintain appropriate security, protection and backup of Client Content, which may include the use of encryption technology to protect Client Content from unauthorized access, and routine archiving of Client Content. Client log-in credentials and private keys generated by the Services are for Client's internal use only and Client may not sell, transfer or sublicense them to any other entity or person, except that Client may disclose Client's private key to Client's agents and subcontractors performing work on Client's behalf. Client agrees to immediately notify Datapipe of any unauthorized use of Client's Services or any other breach of security. Client agrees to cooperate with Datapipe's reasonable investigation of Service outages, security problems, and any suspected breach of the MSA.

7.3 Restrictions on Use of Datapipe Equipment. If Client has contracted to use Datapipe Equipment, Datapipe will order and/or install such equipment. The Datapipe Equipment shall remain the property of Datapipe or Datapipe's service providers and Client shall not take, nor attempt to take, any right, title, or interest in or permit any third party to take any right, title, or interest in any Datapipe Equipment. Client shall not transfer, sell, assign, sublicense, pledge, or otherwise dispose of, encumber or attach a lien or encumbrance upon or against any Datapipe Equipment or any interest in such equipment. Client shall reimburse Datapipe for all reasonable repair or restoration costs associated with physical damage or destruction caused by Client's personnel or agents in the Facility.

7.4 Acceptable Use Policy. In the event Datapipe reasonably concludes that the Services are being used by Client or End Users in contravention of any of the terms and provisions contained in the MSA, Datapipe has the right to suspend the Services to Client or any

End User without liability within five business days after giving written notice and a request to Client to cure, which notice shall specify Datapipe's good faith and reasonable belief as to why the Services are being used in contravention of the MSA. Notwithstanding the foregoing, Datapipe reserves the right to discontinue Services to Client (without liability for actual, compensatory or consequential damages to Client as a result of a bona fide discontinuance of the Services under this Section, unless such discontinuance is as a result of the bad faith act of Datapipe) and on either no notice, or a notice period of less than five days in the event any of the foregoing uses are: (a) having a material adverse effect on the functionality of the Datapipe network, or (b) having a material negative impact on the functionality of a solution maintained by another Datapipe customer, or (c) in response to a take-down notice served upon Datapipe pursuant to the DMCA, unless Client serves Datapipe with a compliant counter-notice pursuant to the provisions of the DMCA within 48 hours of Datapipe providing Client with such take-down request. Datapipe may suspend the Services immediately (a) in response to a governmental request, an administrative entity, a legal proceeding or a court, or (b) in the event of a significant material and adverse impact upon the functionality of the Stratosphere Elastic Cloud Services, the Datapipe network, the Client Services or another customer's services.

7.5 Third Party Products. Client acknowledges that Third Party Product(s) may be provided subject to restricted licenses and shall not be: (i) used except in conjunction with the applicable Datapipe Software or Datapipe Equipment; or (ii) modified by Client or any of its designees in any way unless such activities are expressly permitted pursuant to the terms of the relevant software license agreement governing such Third Party Product(s).

7.6 No Lease. The MSA is a services agreement and is not intended to and will not constitute a lease of any real or personal property.

7.7 Client Costs. Client is solely responsible, and will reimburse Datapipe for all costs and expenses (other than those included as part of Monthly Recurring Fees) associated with placing, installing, maintaining, operating, and removing Client Equipment, including but not limited to, all reasonable and necessary preparations required to comply with Facility rules and procedures.

7.8 End User Violations. Client will be deemed to have taken any action in which Client permits, assists or facilitates any person or entity to take related to the MSA, Client Content or its use of the Services. Client is responsible for End Users' use of Client Content and the Services. Client will ensure that all End Users comply with Client's obligations under the MSA and that the terms of Client's agreement with each End User are consistent with the MSA. If Client becomes aware of any violation of the Client obligations under the MSA by an End User, Client will immediately terminate such End User's access to the Client Content and Service.

7.9 End User Support. Client is responsible for providing customer service (if any) to End Users. Datapipe does not provide any support or services to End Users unless such support is specifically set forth in an Order Form.

7.10 High Risk. Client may not use the Services in any situation where failure or fault of the Services could lead to death or serious bodily injury of any person, or to physical or environmental damage. By way of illustration, but without limitation thereof, Client may not use, or permit any other person to use, the Services in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities, or medical support devices.

8 DATAPIPE OBLIGATIONS, REPRESENTATIONS AND DISCLAIMER OF WARRANTIES.

8.1 General. Datapipe represents that:

8.1.1 Datapipe shall provide the Services in accordance with the specifications listed in each of the applicable Service Schedules and Order Forms, and shall use commercially reasonable efforts to maintain acceptable performance of the Services.

8.1.2 Its experienced and qualified personnel will provide the Services in a high quality and professional manner and in conformance with the specifications set forth in these General Terms, the Order Form(s) and Service Schedule(s).

8.1.3 The Services, Datapipe Equipment and Datapipe Software will not infringe upon or misappropriate any third party's copyright, patents, trade secrets, trademark, trade name, or other proprietary or intellectual property right.

8.2 Rights. Datapipe owns or has the authority to use the Datapipe Equipment and the Datapipe Software.

8.3 Security Audit. Upon prior reasonable advance written notice and with Datapipe's reasonable assistance, Client may conduct or cause a third party to conduct a security audit of Datapipe's operations and systems involved in or related to Datapipe's performance of Services under the MSA. Audits shall be conducted no more frequently than semi-annually, unless the Parties agree otherwise. Each auditor may be required to execute Datapipe's standard form of Non-Disclosure Agreement as a pre-condition to and prior to performing any Audit. To the extent any Audit requires Datapipe to commit more than one employee to more than one business day of Audit-related assistance, Client shall compensate Datapipe $750.00 USD for each day or partial day with respect to each Datapipe employee.

8.4 Selection of Datapipe Equipment; Manufacturer Warranty. All Datapipe Equipment and Datapipe Software are provided AS-IS, subject to any warranties which may be assignable to Client as permitted by such Third Party vendors. Except with respect to any express warranties for Services related to Datapipe Equipment and/or Datapipe Software, Client's use of the Datapipe Equipment and/or Datapipe Software is subject to and controlled by the terms of any manufacturer's or supplier's warranty, and Client agrees to look solely to the manufacturer or supplier with respect to all mechanical, service and other claims, and the right to enforce all warranties made by said manufacturer or supplier are hereby assigned to Client (to the extent Datapipe has such right). Client acknowledges that it has selected the Datapipe Equipment and/or Datapipe Software and that it has not relied on any statements made by Datapipe in doing so.

8.5 DISCLAIMER OF ACTIONS CAUSED BY AND/OR UNDER THE CONTROL OF THIRD PARTIES. CLIENT ACKNOWLEDGES THAT DATAPIPE DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM PORTIONS OF THE INTERNET OR THROUGH EQUIPMENT CONTROLLED BY THIRD PARTIES, AND THAT, AT TIMES, SUCH DATA FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF SERVICES, EQUIPMENT OR DATA PROVIDED OR CONTROLLED BY THIRD PARTIES, THE ACTIONS OR INACTIONS OF WHICH CAN IMPAIR OR DISRUPT CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF) AND THE INTENDED FLOW OF DATA. THEREFORE, DATAPIPE AGREES TO USE COMMERCIALLY REASONABLE EFFORTS TO, AMONG OTHER THINGS, COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS AND USE COMMERCIALLY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS NECESSARY AND APPROPRIATE TO MINIMIZE, REMEDY AND AVOID SUCH EVENTS. ACCORDINGLY, DATAPIPE DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS AND SHALL NOT BE LIABLE FOR THE INADVERTENT DISCLOSURE, TRANSMISSION, FLOW, CORRUPTION OR ERASURE OF DATA AND CONTENT USED, ACCESSED, UPLOADED, INTERFACED WITH, TRANSMITTED, RECEIVED OR STORED ON THE DATAPIPE EQUIPMENT OR THROUGH THE SERVICES BY THIRD PARTIES, UNLESS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF DATAPIPE, ITS EMPLOYEES OR ANYONE UNDER DATAPIPE'S REASONABLE CONTROL. CLIENT FURTHER ACKNOWLEDGES THAT FROM TIME TO TIME, THE SERVICES MAY BE INACCESSIBLE OR INOPERABLE FOR CAUSES BEYOND DATAPIPE'S REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION FORCE MAJEURE EVENTS, SCHEDULED MAINTENANCE AND/OR EMERGENCY MAINTENANCE.

8.6 NO OTHER WARRANTY. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THE MSA, A SERVICE SCHEDULE OR AN ORDER FORM, THE SERVICES ARE PROVIDED ON AN AS-IS BASIS, AND CLIENT'S USE OF THE SERVICES ARE AT ITS OWN RISK. DATAPIPE, ON BEHALF OF ITS PARENTS, AFFILIATES, SUBSIDIARIES, LICENSORS AND THIRD PARTY SERVICE PROVIDERS (THE "**DATAPIPE PARTIES**"), DOES NOT MAKE, AND DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. THE DATAPIPE PARTIES DISCLAIM ALL RESPONSIBILITY FOR ANY SITUATION WHERE THE SECURITY, AVAILABILITY OR STABILITY OF THE SERVICES IS COMPROMISED BY (A) CLIENT, (B) THE CLIENT CONTENT OR (C) ANY ACTIONS TAKEN BY DATAPIPE AT THE REQUEST OF CLIENT. THE DATAPIPE PARTIES DO NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE AND CLIENT AGREES THAT, FROM TIME TO TIME, THE SERVICES MAY BE INACCESSIBLE OR INOPERABLE FOR MAINTENANCE AS PROVIDED IN AN APPLICABLE SERVICE LEVEL AGREEMENT OR DUE TO CAUSES BEYOND THE DATAPIPE PARTIES' REASONABLE CONTROL.

9 RELOCATION OF EQUIPMENT.

9.1 Relocation of Client Equipment. Datapipe may only move or relocate Client Equipment without Client's prior written consent in the event of an emergency in which Datapipe reasonably determines that such relocation is immediately required in order to avoid damage to the Client Equipment. In the event of a non-emergency, Datapipe shall provide Client no less than 60 days' prior written notice if it becomes necessary for Datapipe to relocate the Client Equipment to a different Client Area. In such event, Client shall cooperate in good faith with Datapipe to facilitate such relocation, provided that (a) such relocation is based on the reasonable business needs of Datapipe (which may include the needs of other Datapipe customers), the expansion of the space requirements of Client, or otherwise; (b) Datapipe pays all costs and expenses related to such relocation; and (c) the relocation is managed by Datapipe in cooperation with Client in such a manner as to provide the least amount of risk and disruption to Client's business and avoid any interruption to the Services.

10 INTELLECTUAL PROPERTY OWNERSHIP.

10.1 Ownership. Except for the rights expressly granted in the MSA, no rights in either Party's respective technology or intellectual property is transferred from Datapipe to Client, or from Client to Datapipe, and all right, title and interest in and to such technology and intellectual property shall remain solely with each such Party. Each Party agrees that it will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from the other Party.

10.2 Ownership of Client Content. Client shall retain all right, title and interest (including copyright and other proprietary or intellectual property rights) in the Client Content and all legally protectable elements, derivative works, modifications and enhancements thereof, whether or not developed in conjunction with Datapipe, and whether or not developed by Datapipe, Client or any contractor, subcontractor or agent for Datapipe or Client. To the extent ownership of the Client Content does not automatically vest in Client by virtue of the MSA or otherwise, Datapipe agrees to transfer and assign, and hereby transfers and assigns to Client all right, title and interest in the Client Content and protectable elements or derivative works thereof. Datapipe shall not sell or otherwise transfer, reproduce or use the Client Content for any purpose except to provide the Services.

10.3 Suggestions. Should Client or any End Users provide any Suggestions to Datapipe or Datapipe's affiliates, Datapipe will own all right, title, and interest in and to the Suggestions, even if Client has designated the Suggestions as confidential. Datapipe and its affiliates will be entitled to use the Suggestions without restriction. Client irrevocably assigns to Datapipe all right, title, and interest in and to the Suggestions and agrees to provide Datapipe with any assistance Datapipe may reasonably require to document, perfect, and maintain Datapipe's rights in the Suggestions.

11 LIMITATIONS OF LIABILITY.

11.1 LIMITATION OF LIABILITY. EXCEPT AS OTHERWISE SET FORTH IN THE MSA, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES UNDER THE MSA OR ANY THEORY OF LIABILITY INCLUDING, WITHOUT LIMITATION, LOSS OF DATA, CONTENT OR BUSINESS INFORMATION, LOSS OF TECHNOLOGY, RIGHTS OR SERVICE, ANTICIPATED OR LOST REVENUE OR SAVINGS, LOSS OF CUSTOMERS OR CLIENTS, LOST PROFITS, LOST GOODWILL, LOST BUSINESS OR REPLACEMENT GOODS OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT OR ANY LOSS THAT COULD HAVE BEEN AVOIDED BY SUCH PARTY'S USE OF REASONABLE PRECAUTIONS OR DILIGENCE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES WHETHER ARISING UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR BREACH OF WARRANTIES. EXCEPT AS OTHERWISE PROVIDED IN THIS MSA, THE MAXIMUM CUMULATIVE LIABILITY OF EITHER PARTY OR ITS SUPPLIERS, CONTRACTORS AND SUBCONTRACTORS ARISING OUT OF OR RELATING TO THE MSA FOR ANY REASON WHATSOEVER (INCLUDING WITHOUT LIMITATION ANY PERFORMANCE OR NON-PERFORMANCE HEREUNDER, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT, STATUTE OR OTHERWISE, SHALL IN NO EVENT EXCEED THE GREATER OF THE FOLLOWING:

- THE PRODUCT OBTAINED BY MULTIPLYING SIX (6) TIMES THE INITIAL MONTHLY SERVICE FEE PAYABLE (WHETHER PAID OR PAYABLE) BY CLIENT TO DATAPIPE; OR
- THE TOTAL AMOUNT PAID BY CLIENT TO DATAPIPE DURING THE PRIOR TWO YEAR TERM OF THE MSA.

THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY REGARDLESS OF WHEN THE CLAIM OR CLAIMS GIVING RISE TO SUCH LIABILITY OR LIABILITIES SHOULD OCCUR. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

NOTWITHSTANDING THE FOREGOING, A LIABILITY LIMITATION OF US$5,000,000 SHALL APPLY TO ANY CLAIM BY CLIENT BASED UPON A FAILURE OF DATAPIPE TO PROVIDE THE BACKUP OR SECURITY SERVICES SPECIFIED IN ANY ORDER FORM AND WHICH FAILURE CAUSES THE PERMANENT LOSS OR CORRUPTION OF A SUBSTANTIAL PORTION OF THE CLIENT CONTENT OR SUBSTANTIALLY PREVENTS CLIENT FROM PERFORMING ITS SERVICES FOR ITS CUSTOMERS.

NOTWITHSTANDING ANY LIMITATIONS SET FORTH IN THIS SECTION, CLIENT SHALL BE LIABLE FOR ALL SUMS DUE OR PAYABLE UNDER THE MSA, REGARDLESS OF AMOUNT, TOGETHER WITH ANY ADDITIONAL FEES, ATTORNEY FEES AND/OR COSTS THAT MAY BE DUE DATAPIPE PURSUANT TO SECTION 13.13.

11.2 PERSONAL INJURY. ANY REPRESENTATIVE OF CLIENT, AND ANY OTHER PERSON VISITING A FACILITY DOES SO AT THEIR OWN RISK. DATAPIPE ASSUMES NO LIABILITY WHATSOEVER FOR ANY HARM TO SUCH PERSONS RESULTING FROM ANY CAUSE OTHER THAN DATAPIPE'S NEGLIGENCE OR WILLFUL MISCONDUCT RESULTING IN PERSONAL INJURY TO SUCH PERSONS DURING SUCH A VISIT. FURTHERMORE, ANY SUCH PERSONS VISITING A FACILITY AGREE TO FOLLOW THE APPLICABLE RULES AND PROCEDURES, AS SET FORTH IN THE CORRESPONDING COLOCATION SERVICE SCHEDULE(S).

11.3 DAMAGE TO CLIENT EQUIPMENTAND DATA. EXCEPT AS OTHERWISE PROVIDED HEREIN, DATAPIPE ASSUMES NO LIABILITY FOR ANY DAMAGE TO, OR LOSS OF ANY CLIENT EQUIPMENT OR DATA RESULTING FROM ANY CAUSE OTHER THAN THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT ON THE PART OF DATAPIPE. TO THE EXTENT DATAPIPE IS LIABLE FOR ANY DAMAGE TO, OR LOSS OF CLIENT EQUIPMENT FOR ANY REASON, SUCH LIABILITY SHALL BE LIMITED SOLELY TO THE THEN-CURRENT REPLACEMENT VALUE OF THE CLIENT EQUIPMENT. IN NO EVENT SHALL DATAPIPE BE LIABLE TO CLIENT OR ANY THIRD PARTY WITH RESPECT TO ANY CLAIMS ARISING OUT OF OR RELATED TO THE CLIENT EQUIPMENT.

11.4 Basis of the Bargain; Failure of Essential Purpose. The Parties acknowledge that Datapipe has set its prices and entered into the MSA in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the Parties. The Parties agree that the limitations and exclusions of liability and disclaimers specified in the MSA shall survive and apply even if found to have failed in their essential purpose.

12 INDEMNIFICATION.

12.1 Datapipe Indemnity. Datapipe agrees to indemnify, defend and hold harmless Client and its directors, officers, employees, contractors, agents, successors, and assigns, (collectively, the "**Client Indemnified Parties**") from and against any and all liability (including, without limitation, attorneys' fees and costs) incurred by the Client Indemnified Parties in connection with any actual or alleged claim arising out of (a) any injury to person or property caused by Datapipe; (b) any infringement or misappropriation of a Third Party's rights based on the use of the Services or the Datapipe Software; (c) any injury to person or property caused by DataPipe; ("**Datapipe Claim**"), including, without limitation, any actual or alleged infringement or misappropriation of a Third Party's copyright, trade secret, patent, trademark or other proprietary right; (d) any breach or alleged breach by Datapipe of the MSA, Service Schedule or Order From; or (e) any violation by Datapipe of any applicable law, court order, rule or regulation in any jurisdiction in which the Services are provided.

12.2 Client Indemnity. Client agrees to indemnify, defend and hold harmless Datapipe and its directors, officers, employees, contractors, agents, successors, and assigns, (collectively, the "**Datapipe Indemnified Parties**"), from and against any and all liability (including, without limitation, attorneys' fees and costs) incurred by the Datapipe Indemnified Parties in connection with any actual or alleged claim ("**Client Claim**") arising out of: (a) any injury to person or property caused by any products sold or distributed over the Service Components; (b) Client's use of the Services or Third Party Products; (c) any breach or alleged breach by Client of the MSA or the TPS Agreements (d) any infringement or alleged infringement by Client of a Third Party's rights based on the Client Content, Client Software or Client Equipment; (e) any actual or alleged violation or non-compliance by Client with any applicable law, court order, rule or regulation in any jurisdiction; or (f) any damage or destruction to the Client Area, Facility, or equipment caused by Client, its representatives or designees.

12.3 Limitations. Notwithstanding the foregoing, Datapipe shall not have any liability or indemnification obligations to the Client Indemnified Parties under the MSA to the extent any Datapipe Claim is based in whole or in part upon or arises out of (a) use of the Services or Datapipe Software in combination with equipment, materials, products or software where the use of the Services or Datapipe Software alone would not be infringing; (b) compliance with designs, plans or other instructions provided to Datapipe by or for Client; (c) any repair, adjustment, modification, configuration or alteration to the Services or Datapipe Software by or for Client; or (d) any refusal by Client to install and use a non-infringing version of the Services, Datapipe Software or any part thereof (including, without limitation, any update, if such infringement could have been avoided by use of the most recent update) offered by Datapipe at no cost to Client.

12.4 Notice and Procedures. The Party seeking indemnity hereunder shall give the other prompt written notice of any Datapipe Claim or Client Claim (collectively referred to as the "**Claim**") for which indemnity is sought and shall provide (a) all related documentation in its possession or control relating to such Claim; and (b) reasonable assistance in the defense of such Claim. The Indemnifying Party shall control, at its sole cost and expense, the defense or settlement of any Claim and shall keep the indemnified Party reasonably apprised of the status. The indemnified Party shall have the right, but not the obligation, to participate in the defense of any Claim with counsel of its choice at its sole cost and expense.

13 MISCELLANEOUS PROVISIONS.

13.1 Force Majeure. Except for Client's obligation to make payments under the terms of the MSA, neither Party shall be liable for delays in delivery or performance of its obligations, or for failure to deliver or perform its obligations under the MSA due to a cause or circumstances beyond its reasonable control, including, without limitation, an act of nature, act of civil or military authority, act of terrorism, governmental priority, strike or other labor disturbance, flood, fire, explosion, epidemic, other hostilities, unavailability, interruption or delay of third-party telecommunications or services, the inability to obtain raw materials, supplies, or necessary power, the failure of third-party software, or the failure of the Internet (not resulting from the actions or inactions of such Party)(each, a "**Force Majeure Event**"). The Party claiming excuse due to a Force Majeure Event shall use its commercially reasonable efforts to promptly correct such failure or delay in performance and shall promptly notify the other Party of any delay or failure to perform which may be excused by this provision, which notification will also specify the expected date of resumption of performance. In the event of any such delay, the date of performance shall be extended for a period equal to the time lost by reason of the delay. If, however, either Party is unable to perform its obligations under the MSA for reasons excused by this provision for a period in excess of 30 consecutive days, the other Party may terminate the MSA or any applicable Order Form or Service Schedule by such Force Majeure Event without penalty upon written notice to the other Party.

13.2 Relationship of Parties. Datapipe and Client are independent contractors and the MSA will not establish any relationship of partnership, joint venture, employment, franchise or agency between Datapipe and Client. Neither Datapipe nor Client will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein. Datapipe and Client agree that, except as otherwise expressly provided in the MSA, there shall be no third party beneficiaries to the MSA. Datapipe and Client agree that the MSA is made for the benefit of the Parties and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

13.3 Marketing. Datapipe may refer to Client by trade name and trademark, and may briefly describe Client's business in Datapipe's marketing materials and web site. Client grants Datapipe a revocable license to use any Client trade names and trademarks solely in connection with the rights granted to Datapipe pursuant to this Section and consents to Datapipe's inclusion of Client's name in press releases and on Datapipe's web site. Subject to Datapipe's prior written consent, which shall not be unreasonably withheld, Client may refer to Datapipe by logo, trade name and trademark, and may briefly describe Datapipe's business in press releases, marketing materials and on its web site. Datapipe grants Client a revocable license to utilize Datapipe's logos, trade names and trademarks solely in connection with the rights granted to Client pursuant to this Section.

13.4 Non-Solicitation. The Parties will not knowingly and directly solicit or attempt to solicit for employment or as a consultant any persons employed by the other Party during the Term and continuing through the first anniversary of the termination of the MSA. The foregoing restriction does not apply, however, to any employee or former employee of the other Party who responds to a general advertisement, online job posting, or other form of broad solicitation that does not directly or indirectly target employees of the other Party or who has been separated from employment with the other Party for at least six consecutive months before the date when the person is first recruited, solicited for hire, or offered employment.

13.5 Government Customers and U.S. Government Rights. Datapipe provides the Services for ultimate federal government end use solely in accordance with the following license rights to use, modify, reproduce, release, perform, display, or disclose: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in the MSA. This customary commercial license is provided in accordance with the Federal Acquisition Regulation ("**FAR**") at 48 C.F.R. 12.211 (Technical Data) and FAR 12.212 (Software) for civilian agencies of the federal government, and, for Department of Defense transactions, the Defense Federal Acquisition Regulation Supplement ("**DFARS**") at 48 C.F.R. 252.227-7015 (Technical Data – Commercial Items), 48 C.F.R. 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). This U.S. Government Rights clause, consistent with 48 C.F.R. 12.211, 48 C.F.R. 27.212 (federal civilian agencies) or 48 C.F.R. 227.7202-4 (DoD agencies) is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses U.S. Government rights in computer software, computer software documentation or technical data related to the Datapipe Software licensed under the MSA or in any contract or subcontract under which the Datapipe Software is acquired or licensed. If a government agency has a need for rights not conveyed under these terms, it must negotiate with Datapipe to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in writing and agreed to by Datapipe.

13.6 Severability. In the event any portion of the MSA is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the Parties and the remainder of the provisions shall remain in full force and effect. Either Party's failure to insist upon or enforce strict performance of any provision of the MSA, or delay in doing so, shall not be construed as a waiver of any provision or right.

13.7 Certain Employment Issues. If Client employees or Third Parties which have been contracted by Client for rendering contractually agreed services that are in all material respects equivalent to the Services prior to the beginning of the MSA assert the transfer of their employment relationship or claims thereto against Datapipe under EU Directive 2001/23/EC or similar national legislation, Client shall use its best efforts to either prevent the transfer of the employment relationship or to hold off such claims. Client shall hold harmless and indemnify Datapipe from all costs incurred in connection with the transfer prevention as well as from any compensation payments to the employee and fees for any external legal counsel, as well as any and all incurred costs and financial claims of the employee or Third Party that arise from or are due to a claim of further employment or re-employment. These expenses include costs or salary, health insurance, social security contributions, voluntary and legal pension contributions, company pension scheme, pension funds and any severance costs in line with Datapipe's standard generally-applicable policy.

13.8 Assignment. Either Party may, upon written notice to the other Party, assign the MSA to (i) its Affiliates and (ii) any entity as a result of a merger or sale of all or substantially all of the assets of such Party to such entity and such entity agrees in writing to be bound by the terms of the MSA; provided that such entity is not a direct competitor of Client or Datapipe (as the case may be) in which case the non-assigning Party may terminate the MSA by providing written notice no later than 30 days after the effective date of assignment. The MSA will be binding on and inure to the benefit of the Parties respective permitted successors and permitted assigns. Notwithstanding the foregoing, Datapipe may use Third Parties or Affiliates to provide all or part of the Services. This provision does not apply to the Third Party Products which are governed by separate agreements.

13.9 Notice. Any notice or communication required or permitted to be given pursuant to the MSA, if specified to be in writing, shall be deemed delivered (i) if by hand delivery, upon receipt thereof, (ii) if by next day delivery service upon such delivery, or (iii) if by e-mail, upon verified delivery evidenced by return e-mail of the recipient. Such notice will be deemed to have been served as of the date it is delivered. All notices shall be addressed as follows (or such other address as either Party may in the future specify in writing to the other):

In the case of Datapipe, Inc.:

Name:	Michael Bross, General Counsel	Telephone:	201-792-1918
Address:	10 Exchange Place 12th Floor Jersey City, New Jersey 07302	Fax:	201-792-3090
		E-mail:	Legal@Datapipe.com

In the case of Client:

Name:	Internet Identity Attn: CEO	Telephone:	253 590 4100 ##
Address:	1142 Broadway Suit 400 Tacoma, WA 98402	Fax:	253 295 5248
		E-mail:	legal.affairs@ ~~jason.atlas~~@internetidentity.com

13.10 Export Matters. Client agrees to comply with all regulations and requirements of the U.S. Departments of Commerce, State and Treasury, and any other United States or foreign agencies and authorities in connection with Client's use of the Services and to not, in violation of any laws, regulations or requirements transfer, or authorize the transfer, of any software or Services (a) into any destination without first obtaining any license or other approval that may be required, (b) to anyone on any of the lists found at http://export.gov/ecr/eg_main_023148.asp, or (c) to any end-user or for any end-use if such end-user or end-use is prohibited by part 744 of the United States Export Administration Regulations. By using the Services, Client represents that Client is not located in any destination described in (a) above, listed on, or controlled by any person who is listed on, any list described in (b) above, or engaged in any of the activities described in (c) above. Client assumes responsibility for compliance with laws, regulations and requirements applicable to export and re-export (including import) of items provided hereunder and for obtaining any required export and re-export (including import) licenses or other approvals that may be required. Client will not transfer to or through the Services any technical data, software or other items controlled for export under the International Traffic in Arms Regulations ("**ITAR Data**") or other applicable laws governing ITAR Data unless Datapipe has agreed in writing to the transfer.

13.11 Agreement. The MSA shall be governed by, and construed in accordance with, the laws of the State of New Jersey applicable to a contract executed and performed in such State without giving effect to conflicts of laws rules or principles. The application to the MSA of the United Nations Convention on the International Sale of Goods is excluded in its entirety. Neither the course of conduct between the Parties nor trade practice shall act to modify any provision of the MSA. Neither Party nor its representatives will be liable for loss or damage or deemed to be in breach of the MSA if its failure to perform its obligations results from compliance with any law, ruling, order, regulation, requirement of any federal, state or municipal government or department or agency thereof or court of competent jurisdiction. Any delay resulting therefrom will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable. The terms and conditions of the MSA, including all amendments executed pursuant hereto, shall prevail notwithstanding any different or additional terms and conditions of any purchase order or other form for purchase, payment or otherwise submitted by Client to Datapipe, all of which are hereby rejected. Each Party irrevocably submits to the exclusive jurisdiction of the Federal and/or State courts of the State of New Jersey for the purposes of any suit, action or other proceeding arising out of the MSA or the transactions contemplated hereby. Each Party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of the MSA or transactions contemplated hereby in (i) the United States District Court for the District of New Jersey or (ii) the Superior Court of the State of New Jersey and further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

13.12 Remedy. All remedies in the MSA are cumulative and neither the availability nor exercise of any such remedy shall prevent a Party from exercising any other remedy it would otherwise have under the MSA or by law.

13.13 Attorney's Fees. Should it become necessary to take any action to enforce the terms of the MSA, the prevailing Party shall be entitled to recover its actual and reasonable attorney's fees and costs including, but not limited to any reasonable attorney's fees associated with obtaining, enforcing or collecting upon any judgment as well as any subsequent appeal.

13.14 Entire Agreement. The MSA constitutes the complete and exclusive agreement between the Parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. Each portion of the MSA may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument.

13.15 Delivery by Electronic Means. Copies of executed counterparts transmitted by facsimile or electronic means shall be considered original executed counterparts for purposes of the MSA.

13.16 Interpretation of Conflicting Terms. In the event of a conflict between or among the terms in these General Terms and any other document made a part hereof, the documents shall control in the following order: these General Terms, the Order Form(s) and Service Schedule(s) and any amendments thereto.

13.17 No Interpretation Against Drafter. The MSA is the product of negotiations between the Parties and any ambiguities construed against the drafter of an agreement shall not apply to the MSA (including, but not limited to, any amendments, Order Forms, or Service Schedules) and are expressly waived.

13.18 Headings. The headings in the MSA are used for convenience of reference and shall not be deemed to modify or affect the interpretation of the MSA.

[SIGNATURE PAGE]

SIGNATURES.

The Parties have executed the MSA on the date indicated below effective as of the Effective Date.

Internet Identity
1142 Broadway
Suite 400
Tacoma, WA 98402

Signature: [signature]

Print Name: Lars Harvey

Title: CEO

Date: November 29, 2013

Datapipe, Inc.
10 Exchange Place
12th Floor
Jersey City, NJ 07302

Signature: [signature]

Print Name: Michael Bross

Title: Senior Vice President

Date: December 2, 2013

Approved Final Form of Agreement
Datapipe Legal Department

Approved Final Form of Agreement
Datapipe Legal Department